INFINITY
COMMUNICATIONS AND CONSULTING

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the matter of:	)	
	)	
Response to Funds for Learning's Petition for	)	
Clarification of Confidentiality of Consultant	)	CC Docket No. 02-06
Information Included on the New FCC Forms 470	)	
and 471 and Definition of "Consultant"	)	
	)	

December 13, 2010

We want to thank the Commission for allowing public comment on the Petition for Clarification that Funds for Learning submitted recently. Like Funds for Learning, we feel strongly that USAC should collect information on all entities that helped the Applicant plan for and ultimately file for their E-rate funding. As in any federal or state program(s), there are always those that try and gain an unfair advantage by circumventing program rules or out right committing fraud. Those Applicants, Service Providers and E-rate consultants need to be identified and banned from participating in E-rate funding. If it helps USAC to identify potential bad E-rate consultants by making Applicants identify their E-rate consultants on their Form 470s and 471s, then we whole heartily agree with this action. If, by requiring E-rate consultants to be identified on Form 470's and 471's, it possibly stops some bad actors from even considering "gaming' the system, then that's a good thing.

Our main concern is we believe, based on the emphasis placed on the issue of gifting and identifying E-rate consultants in the 6th Report & Order, the FCC has taken the position that just because an Applicant has listed an E-rate consultant on their E-rate forms that the E-rate consultant has in some way had any input or say in how the Applicant decides which Service Providers to use or, for that matter, that the Applicant is following all E-rate rules. We are fearful that the FCC has taken the position that the E-rate consultant has the legal responsibility to validate and verify that the Applicant has followed 100% all E-rate rules and regulations.

P.O. Box 6069 • Bakersfield, CA 93386 • 661-716-1840 • Fax - 661-716-1841 • Infinitycomm.com

We want to make sure the FCC is aware that a significant percentage of E-rate consultants ***ONLY*** file E-rate forms and do nothing more. They don't get involved in looking at Technology Plans, CIPA compliance, decide how the Applicant procures goods and services, designing or writing RFPs/Bids, make sure that the Applicant can afford their un-discounted portion of what E-rate does not pay, validate and verify that Applicants get all of their discounts from their Service Providers, etc. To clarify, many E-rate consultants ***ONLY*** file forms and are not paid to nothing more. They make no representation that the Applicant has followed all E-rate rules and is not paid to make that representation. If the FCC is going to take the position that an E-rate consultant must become legally liable for the actions of the Applicant, the FCC will need to make this abundantly clear to the Applicant and E-rate consultants in a future action. If this is the case, we suggest there should be an E-rate application process such as what Service Providers must go through.

I can not comment on how other E-rate consultants establish their fees but, for Infinity, the more services the Applicant requests of us, the higher the fee. If the Applicant wants Infinity to be actively involved in every aspect of their E-rate project(s), our fees go up significantly. If the Applicant only wants us to file their forms, the cost goes down. If, all we do is file forms and have no other involvement with the Applicant's E-rate program, what benefit will it give USAC to know that Applicant has an E-rate consultant?

We do concur with Funds for Learning that, if the E-rate consultant information is made available to the public, unethical new start-up E-rate consultants will use the data to validate to potential Applicants that they are "certified" by the FCC. Unless the FCC proposes in a future action to require more stringent rules on what type of background, training, financial condition, types of Error's & Omissions insurance requirements, certifications, etc, having a Consultant Registration Number (CRN) is going to do little to ensure compliance to E-rate rules. Releasing E-rate consultant information could have the above significant unintended negative affect. As you are aware, we already have this problem with unscrupulous Service Providers that contact Applicants and imply that they are "certified" by the FCC by the mere fact that they have a SPIN in hopes of gaining new business.

We also agree with Funds for Learning that Infinity will have to probably be forced to make the difficult decision to not take on a new "problem" Applicant if that Applicant has used an unscrupulous E-rate consultant in the past or been under investigation by USAC because of past practices. Even though these Applicants probably need our services the most, if there's even the slightest chance that USAC would then hold up PIA reviews or funding for all of our other clients because we have decided to try and repair and fix a new "problem client", we will probably be forced to not do work for the new client. What if Infinity starts working with an Applicant that has a history of being unsuccessful and in the past been identified as not following all USAC rules? What if we have been hired to "clean house" and make sure they are following all E-rate rules going forward? Will this hold up funding for our other Infinity clients? If we don't take on these clients, who will? Maybe one of the new start up companies that don't have the background, experience and history of following USAC rules such as a company like Infinity, Funds for Learning or other qualified E-rate consultants will take on these "problem" Applicants?

It is our experience that many Applicants get most of their E-rate "compliance" information from in-person or online training that their State E-Rate Coordinators, State Librarians, other governmental organizations conduct or directly from the guidance posted on the SLD website. Many of our Applicants use this same information and use it to supplement what we do for them. When we are working with them in our planning meeting(s) in preparation of the upcoming filing, they have already done most of the internal processes such as deciding what services to apply for, plan the procurement process, written the technology plan, etc. They may or may not ask us for comments or suggestions on how to procure services or make sure they are in compliance with USAC rules. If they have that portion completely handled and taken care of, how does it help USAC to know that the E-rate consultant filed the forms? Possibly there should be a series of boxes on the forms that the Applicant would be required to check to identify what services their "consultant(s)" performed. Since the State E-Rate Coordinator or other non-paid resources provided "compliance" guidance, shouldn't the State E-Rate Coordinator or other non-paid resources have to be listed on the Form 470 and 471 as well? What if the Applicant went to the USAC annual Service Provider training and it was that information the Applicant based their procurement off of? If it's discovered that there is a problem with the application, shouldn't all entities with no distinction if these were "paid" or "non-paid" entities, be listed on the Form 470 and 471 that provided guidance?

We also believe that the new rule requiring Applicants to list their E-rate consultant(s) will drive the unethical "E-rate consultant" further underground. Those consultants that have knowingly "gamed" the system that are aware of this new USAC requirement will either convince or conveniently not disclose to the Applicant that this requirement exists.

Respectfully submitted,

Fred Brakeman RCDD, CSI
President
Infinity Communications & Consulting, Inc.